

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3067 of 1998

\*\*

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
2. To be referred to the Reporter or not? YES

J

3. Whether Their Lordships wish to see the fair copy of the judgement? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge?  
NO

-----  
MANISH PANDEY

Versus

M.S UNIVERSITY  
-----

Appearance:

MR BS PATEL for Petitioners  
MR NV ANJARIA for Respondent Nos.1 and 2  
Ms. Katha Gajjar, ASSTT GOVT PLEADER  
for respondent no.3.  
MR RAMNANDAN SINGH for Respondents nos.4 to 11  
-----

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 13/07/98

ORAL JUDGEMENT :

The petitioners are the students of Maharaja Sayajirao University, Vadodara. They have passed their final MBBS Examination and are at present functioning as internees. The Medical College and Hospital at Vadodara

is run by the State Government. The petitioners are desirous of obtaining admission into Post Graduate course of the University on clinical side. It is an accepted position that for being registered in a Post Graduate course on clinical side, one has to get a post in residency in a teaching hospital for carrying out the clinical work. The petitioners are, however, apprehensive that they may not get admission for three reasons, viz.

- (a) they consider the relevant provisions of the rules framed by the University and the State Government governing these admissions, to be discriminatory and unfair as compared to the Gujarat University and South Gujarat University;
- (b) the interpretation of the relevant rules as reflected in the past practice concerning these admissions; and
- (c) the fluctuations in the results whereby in the year they passed final MBBS, the results were said to be stricter when compared to earlier results.

Hence this petition invoking Article 14 of the Constitution of India contending that the relevant rules for Post Graduate registration and residency are discriminatory. Alternatively it is submitted that they be read in such a way to remove the hardships or appropriate guidelines be given for that purpose. Shri B.S. Patel, learned advocate appears for the petitioners.

2. Respondent no.1 to the petition is M.S. University, Vadodara through its Registrar and respondent no.2 is the Dean of the Faculty of Medicine of the same University. Shri N.V. Anjaria, learned advocate appears for respondent nos.1 and 2. Respondent no.3 is the State of Gujarat. Ms. Katha Gajjar, learned AGP appears for respondent no.3. Respondents nos.4 to 11 are other students represented by Shri Ramnandan Singh, learned advocate, who contend that the rules are not discriminatory and the interpretation of the relevant rules as reflected in the past practice concerning admissions is correct.

3. One Shri Kamal Pathak, Dean of the Medical Faculty of M.S. University has filed an affidavit in reply on behalf of the University enclosing thereto the Rules of the University relating to Post Graduate

studies, and the Rules framed by the Government governing appointment of residents at the Government Medical Colleges. Petitioner no.2 has filed a rejoinder thereto. Respondent no.6 has filed affidavit in reply. Respondents nos.6 to 12 are opposing this petition. Shri Ramnandan Singh, learned advocate appears on their behalf. As far as respondent no.3 is concerned, two affidavits are filed; firstly one by Dr. K.P. Desai (who is a Lecturer) on behalf of Dean of Medical College, Vadodara and another by one Shri P.M. Asari, Under Secretary in the Health and Family Welfare Department.

4. The submission of Shri Patel, learned advocate is that relevant rules are discriminatory. He has particularly emphasised the provisions contained in rules 6.4 and 6.5 of the rules governing the appointment of residents at the Government Medical College. These two rules read as follows :

"6.4 Candidates should not be of more than four years standing after passing the Third MBBS examination on the day of their regular admission to the first year residency."

"6.5 If a candidate applies for any of the first year residency and does not accept the residency when offered in the subject of his final choice he will not be considered for any other residency in any subject in future. For this purpose, offer made at the time of interview will be considered final."

Shri Patel, learned advocate has compared these rules with the rules existing in Gujarat University. He has particularly laid stress on rules 1.5, 1.6 and 4.1 of the rules governing admission to Post Graduate course framed by this University. They read as follows :

"1.5 A candidate who is currently engaged in P.G. Medical studies in Gujarat University or any other University or equivalent body is not eligible. On completion of the course he becomes eligible."

"1.6 A candidate who, in the past, selected and joined to any P.G. Medical course of this or any other University or

equivalent body and did not complete that course, is not eligible."

"4.1 Preference shall be given to candidates of not more than 1 year standing after completion of internship/ Housemanship graduating from this University."

5. Thereafter Shri Patel, learned advocate has drawn my attention to the relevant rules of South Gujarat University. The relevant part of rule 1 and rules nos.2 and 3 thereof read as follows :

Rule (1)

"... Merit list for each of the above categories will be prepared as per total marks obtained at final MBBS Part- I and Part- II (Phase- III) in total. The final merit list will be prepared as per total percentage of marks obtained at final MBBS qualifying examination of both old and new course (Phase System) provided State Government of Gujarat Permission is obtained by the above Medical Officers under (b) and (c) (II), (III) (iv) (v) (vi) and (vii)."

Rule (2)

"For every year after completion of Internship, 1 per cent marks should be deducted from merit if a candidate has completed Internship more than 1 year (two terms) before, 1 % should be deducted if two years 2 % should be deducted and so on."

Rule (3)

"Students will be offered only one registration at a time, i.e Degree or Diploma, simultaneously registration will not be given, students already registered for Diploma in any subject if desires to register in Degree or a student already registered for Degree desires to register in Diploma will have to leave the existing registration."

6. Having drawn my attention to the rules governing admission into PG courses in MS University and other two Universities, Shri Patel, learned advocate submitted that the admission at the MBBS level to any of the three Universities is by a centralised procedure. At the Post

Graduate level, however, the rules of admission are different. Thus, under rule 6.4 governing admission to residencies in MS University, a candidate can be of not more than 4 year standing after passing his Third MBBS Examination. That means, he has four extra chances after applying for a post on the first occasion, if he is not offered a subject of his final choice. He submits that there is no such rule in Gujarat University similar to one in MS University. Therein under rule 4.1 there is a provision for some kind of preference to the students of the same University, but it is stated that preference shall be given to candidates of not more than one year standing after completion of internship. Thus, it can be said that after being considered in the first year, there is only one more chance available in Gujarat University. When it comes to South Gujarat University the above referred rule 2 provides that, 1 % marks will be deducted if a candidate has completed internship more than one year before, 2 % marks will be deducted if he has completed it two years before and so on. Thus, Shri Patel submits that as far as South Gujarat University is concerned a disability is created for the students who do not get admission immediately and if they want to be considered at a later point of time. He submits that there is no such disability as far as MS University is concerned. He, therefore, submits that if in a year results are strict, then students of that year are at a disadvantage as compared to the students who have passed earlier, who have got better marks. He has tried to demonstrate by relying upon a few charts prepared for this purpose. Now as far as all these provisions are concerned, Shri Patel submitted that the policy of restricting the choice to only those students who have passed the qualifying examination in the current year or only the preceding year or at least creating a disability for the past students is a desirable policy because only such policy can be said to have rational nexus to the object of attracting better talent to medical courses. Shri Patel, learned advocate relied upon observations of a learned Single Judge in Jayesh A. Joshipura v. State of Gujarat and others, 1984 (2) GLR 761. in this behalf. Although the decision rendered in that matter is concerning MBBS/ Dentistry admissions, the opinion expressed therein has a relevance for the Post Graduate admissions also.

7. As far as the rules prevailing in Gujarat University are concerned, Shri Patel drew my attention to a Division Bench judgment in Dr. Himanshu Purshottamdas Bavishi and others v. State of Gujarat and others, 1983 (2) GLR 1414 and pointed out that these rules are framed

in consequence of the judgment rendered in that matter wherein the Division Bench directed the State Government to make appropriate amends in the residency rules so as to bring them in conformity with the registration rules that may be ultimately enacted by the University. In that judgment the Division Bench directed the authorities to consider as to whether any preference can be given to a batch of students who have become eligible in the same academic year in which they seek admission to Post Graduate courses. The Court said that it was a matter of policy which the University alone has to decide, but that should be in the light of expert advice and subject to correct legal principles.

8. Shri Singh, learned advocate appearing for the opposing group of students on the other hand submitted that the rule 6.4 governing Post Graduate admissions in MS University was an enabling provision and it should be considered only as such. It only gave three more opportunities as compared to Gujarat University. He further submitted that the students represented by him also had to give way to the seniors in earlier years due to this very prevailing rule and if they had a chance of admission this time, the same ought not to be disturbed by last minute change in the rules. Besides he submitted that the submission of the petitioner cuts both ways. If in a given year the results are better than the earlier year(s), the students of the earlier year(s), who are waiting for a post, continue to suffer. That apart, Shri Singh submitted that the submission of Shri Patel regarding shifting the category made on the basis of availability of four extra chances is more of a theoretical type, since if a student does not get a post of his choice, then after spending a year or two elsewhere normally he would not like to shift and the number of such students is always very small.

9. Shri Anjaria, learned advocate appearing for the M.S. University submitted that merely because there are different rules in different Universities, that by itself cannot amount to discrimination. Besides any direction governing admissions to be effected now at the last stage will create further difficulties and the same is not desirable. Any change to be made ought to be prospective.

10. Apart from the above referred rule 6.4, as far as rule 6.5 is concerned, the same is quite clear inasmuch as it states that once any of the choices applied by a student is offered to him, he cannot be considered for any other residency in any subject in future. Almost a

similar provision is there in Gujarat University in clause 1.6 which says that a candidate if selected in the past for any Post Graduate medical course in Gujarat University or any other University, he will not be eligible for being considered. Clause 3 of South Gujarat University is also almost on the same lines. The only question, therefore, to be considered is as to whether clause 6.4 of MS University rules is a discriminatory clause creating unjustified and unfair discrimination.

11. Having considered the rival submissions, in my view also, as observed by the learned Single Judge (Mazmudar, J. as he then was in this Court) in the case reported in 1984 (2) GLR 761, prima facie it appears to be desirable to limit the area of choice. It is however, a matter of policy, "which the University alone can decide in the light of expert advice and subject to correct legal principles", as laid down by the Division Bench in the aforesaid judgement reported in 1983 (2) GLR 1414 and that also has to be in conformity with the State Government rules governing residency. However, at the same time, it cannot be lost sight of that the different universities are autonomous bodies. They have authority to frame their own rules of admission in accordance with their procedure and with appropriate consultation/guidance from the State Government. The rules framed by them cannot be completely identical, though they need not be substantially dissimilar in their content also unless there are valid reasons for the same. Mere existence of different rules cannot by itself amount to discrimination against students who have passed recently. Their agitation due to the dissimilarity and disparity in the rules is quite understandable. Yet, the problem cannot be solved on the touchstone of discrimination, but by appropriate rule making only.

12. Shri Patel, learned advocate relied upon a letter dated 22.4.1995 addressed to the Dean of Medical College, Vadodara by the then Commissioner of Health and Medical Services, in the context of one Dr. Deepal, which observed as follows :

".. .. It is also not an enabling provision which permits shifting from one category, viz. the residency to another category, viz. the non stipendiary seat. .. .."

".. .. M.S. University may be requested to examine the issue in its entirety and frame suitable rules after the requisite deliberations. Until this is done, you are directed not to

permit shifts from residency to non stipendiary seats. . . ."

13. The second submission of Shri Patel, therefore, was that this letter was written way back in 1995 and no steps were taken all these years. This letter is a fax message bearing no outward number. Yet, the existence of such letter is not disputed either by Ms.Gajjar, learned AGP or by Shri Anjaria, learned advocate for the University. Affidavit of Shri Desai, has, however, explained that an elaborate procedure is required to be followed consequent upon any such recommendation and thereafter only any changes can be effected in the rules. Besides, the affidavit of Shri Asari encloses therewith the subsequent letter dated 10.5.1995 by the same Health Commissioner, which in a way withdraws the earlier letter. That is also a letter written in the context of another student, one Shri Chauhan and after referring to the earlier fax message, it states in the last sentence that;

"In such a situation the College Council is free to follow whatever system was being followed till date."

14. The third submission of Shri Patel, learned advocate is based on the fluctuation in marks. In fact, that is the factor which has led the present petitioner to approach this Court. As far as this aspect is concerned one cannot always insist on a strict uniformity. The following observations of the Honourable Supreme Court of India in para 17 in State of Kerala v. Kumari T.P. Roshana and others, AIR 1979 SC 765, have got to be followed in this behalf :

"The vagarious element in marking and moderation of marks may be a fact of life, but too marginal to qualify for substantial difference unless otherwise made out. Indeed, there may be differences among the colleges under the same University, among the examiners in the same University. Such fleeting factors or ephemeral differences cannot be the solid foundation for a substantial differentiation which is the necessary pre condition for quashing an executive or legislative act as too discriminatory to satisfy the egalitarian essence of Art.14. . . "



15. There is one more aspect which has got to be noted that although there is some substance in the grievance made by the petitioners, yet one cannot effect changes in the rules at the last moment by a judicial interpretation. A change in the rules is a matter preferably to be considered by the University and the State Government. Any such change at the last moment would create difficulties not only for the University, but it will be unfair to the students seeking admission on the basis of existing rules. Any such change in the rules by judicial intervention and interpretation has got to be avoided and if necessary ought to be made prospectively applicable as far as possible, unless any such directions for reconsideration of the rules become futile. The past experience is, however, not discouraging. The Division Bench judgment in Dr. Himanshu Purshottamdas Bavishi's case (supra) did lead to changes and corrections in the Gujarat University rules.

16. In these circumstances it is difficult to entertain this petition. That is, however, with a rider that the University and the State Government ought to examine this matter in details and to decide whether the additional choices which are available to the past students in MS University ought to be curtailed to only one extra chance as existing in Gujarat University or they should introduce some disability, such as, reduction in marks by 1 per cent for each year as existing in South Gujarat University. That will be a matter however, entirely for the University and the State Government to consider and it is hoped and accordingly directed that they take the necessary steps in this behalf expeditiously. Next round of admissions to the Post Graduate course will be in December/ January. In the circumstances the authorities concerned of the State Government and M.S. University will take steps to examine and if they deem it fit to effect necessary changes by the end of November 1998 and notify them appropriately in advance. In case they decide to retain the present provisions, they will take a reasoned decision in support thereof and record it appropriately.

17. The petition is accordingly disposed of, though with the above observations. Notice is discharged. No order as to costs.

18. A copy of this order to go to the Dean, Government Medical College, Vadodara; Secretary (Health) Government of Gujarat; and Vice Chancellor, M.S. University, Vadodara. Direct service is permitted.

-oOo-  
karim\*